

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

THE BANK OF NOVA SCOTIA,)	
)	
Plaintiff,)	
)	
v.)	Civil No. 2004-105
)	
ASHLEY GEORGE and IRAN HODGE,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Matthew J. Duensing, Esq.
St. Thomas, U.S.V.I.
For the Plaintiff.

Ashley George
Pro se defendant.

Iran Hodge
Pro se defendant.

ORDER

GÓMEZ, C.J.

Before the Court is the motion of the plaintiff, The Bank of Nova Scotia ("BNS"), to reconsider this Court's denial of BNS's motion for default judgment against the *pro se* defendants (the "Defendants") in this matter.

BNS commenced this debt and foreclosure action in August, 2004. The complaint and a summons were served on each of the Defendants. Neither of the Defendants filed an answer or otherwise made an appearance in this matter. BNS requested entries of default against the Defendants. The Clerk of the

Court entered defaults against the Defendants in December, 2004. Following the entries of default, BNS filed a motion for default judgments against the Defendants. The Court denied that motion, reasoning that BNS had not complied with the Servicemembers Civil Relief Act. BNS now seeks reconsideration of the Court's denial of its motion.

Motions for reconsideration are governed by Local Rule of Civil Procedure 7.3, which provides:

A party may file a motion asking the Court to reconsider its order or decision. Such motion shall be filed within ten (10) days after the entry of the order or decision unless the time is extended by the Court. Extensions will only be granted for good cause shown. A motion to reconsider shall be based on:

1. intervening change in controlling law;
2. availability of new evidence, or;
3. the need to correct clear error or prevent manifest injustice.

LRCi 7.3 (2008). The purpose of a motion for reconsideration "is to correct manifest errors of law or fact or to present newly discovered evidence." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985). Such motions are not substitutes for appeals, and are not to be used as "a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Bostic v. AT&T of the V.I.*, 312 F. Supp. 2d 731, 733 (D.V.I. 2004). As the *Bostic* court noted, ". . . Local Rule [7.3] affirms the common

understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal." *Id.*

Here, BNS does not explicitly assert an intervening change in controlling law, the availability of new evidence or the need to correct clear error or prevent manifest injustice. Instead, BNS contends that reconsideration of this Court's ruling is warranted on the ground that BNS is now in compliance with the Servicemembers Civil Relief Act. In support of that contention, BNS has filed the affidavit of its counsel. That affidavit states, in pertinent part:

I have reviewed [BNS's] records in this matter and based upon the information the defendants have provided to [BNS], [the Defendants] are not actively or non-actively serving in the military services.

(Duensing Aff. ¶ 2, Sept. 29, 2006).

The Servicemembers Civil Relief Act provides, in pertinent part:

Protection of servicemembers against default judgments

. . . .

(b) Affidavit requirement

- (1) Plaintiff to file affidavit. In any action or proceeding covered by this section, the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit--
 - (A) stating whether or not the defendant is in military service *and showing necessary facts to support the affidavit*; or

- (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

50 U.S.C. app. § 521(b)(1) (emphasis supplied).

The purpose of the Servicemembers Civil Relief Act "is to suspend enforcement of civil liabilities of persons in military service of the United States in order to enable such persons to devote their entire energy to the defense of the Nation."

Engstrom v. First National Bank of Eagle Lake, 47 F.3d 1459, 1462 (5th Cir. 1995). The public policy behind the act thus "is to allow military personnel to fulfill their duties unhampered by obligations incurred prior to their call." *Omega Industries, Inc. v. Raffaele*, 894 F. Supp. 1425, 1434 (D. Nev. 1995). Moreover, the provisions of the act are to be "liberally construed" and applied in a "broad spirit of gratitude towards service personnel." *Engstrom*, 47 F.3d at 1462; *Omega Industries, Inc.*, 894 F.Supp. at 1434 (citations omitted).

Here, the affidavit BNS has provided fails to meet the requirements of the Servicemembers Civil Relief Act because it does not show necessary facts to support its bare assertion that the Defendants are not in military service. See, e.g., *In re Templehoff*, No. 05-36242, 2005 Bankr. LEXIS 2808, at *11 (Bankr. S.D.N.Y. Aug. 2, 2005) (holding that an affidavit regarding

military service was inadequate where it "did not show the necessary facts to support the affidavit"); *In re Berke*, 2004 Bankr. LEXIS 605, at *5-6 (Bankr. N.D. Ga. Apr. 27, 2004) (denying a motion for default judgment where, *inter alia*, the plaintiff failed to file an affidavit "indicating whether the defendant is or is not in the military service or that the plaintiff is unable to determine the defendant's military status"); *Kee v. Hasty*, Civ. No. 01-2123, 2004 U.S. Dist. LEXIS 6385, at *21 (S.D.N.Y. Apr. 14, 2004) (recommending a denial of a motion for default judgment where the plaintiff "has not presented any evidence that [the defendant] is not overseas on active duty"); *cf. UMG Recordings, Inc. v. Morgan*, Civ. No. 06-545, 2006 U.S. Dist. LEXIS 76267, at *4 (W.D. Okla. Oct. 18, 2006) (granting a motion for default judgment where "[p]laintiffs submitted the affidavit [stating] that a search of available public databases indicates that Defendant is not in the military service"); *Fonovisa, Inc. v. Villasana*, Civ. No. 05-539, 2005 U.S. Dist. LEXIS 29757, *3-4 (D. Colo. Sept. 6, 2005) (granting a motion for default judgment where "[p]laintiffs have tendered an affidavit averting that . . . a search in the U.S. Military Locator database of LexisNexis indicates that Defendant is not in military service").

BNS has failed to meet its burden for reconsideration because the argument it now raises fails to identify any

intervening change in the law, new evidence, or clear error. See, e.g., *Devcon Int'l Corp. v. Reliance Ins. Co.*, Civ. No. 2001-201, 2007 U.S. Dist. LEXIS 84283, at *9-10 (D.V.I. Nov. 9, 2007).

Moreover, BNS is still not entitled to default judgments against the Defendants because it has not complied with the Servicemembers Civil Relief Act.

Furthermore, Local Rule 7.3 provides that motions for reconsideration must be filed within ten days after entry of the order or decision of which reconsideration is sought, unless the Court grants an extension of time for good cause shown. Here, the Court denied BNS's motion for default judgment on June 27, 2006. BNS did not file its motion for reconsideration until September 29, 2006. Thus, more than ten days passed from the entry of the Court's order and the filing of the motion now before the Court. The record does not reflect that BNS sought or was granted an extension of time. As such, BNS's motion for reconsideration is untimely.

For the reasons stated above, it is hereby

ORDERED that the motion is **DENIED**.

Dated: February 15, 2008

S_____
CURTIS V. GÓMEZ
Chief Judge

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